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District Court

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for the Northern Mariana Islands
By________________
(Deputy Clerk)

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

YU XUAN, Plaintiff, vs. JOO YEON CORPORATION and SE YOUNG CORPORATION, Commonwealth of the Northern Mariana Islands corporations, YANG-TACK HWANG and YOUNG-SIN PARK, individuals residing in the Commonwealth of the Northern Mariana Islands, Defendants.	CASE NO. CV 12-0032 VERIFIED COMPLAINT FOR VIOLATIONS OF THE FAIR LABOR STANDARDS ACT AND SUPPLEMENTAL STATE LAW CLAIMS

COMES NOW, YU XUAN with the following Verified Complaint against JOO YEON CORPORATION, SE YOUNG CORPORATION, YANG-TACK HWANG and YOUNG-SIN PARK:

JURISDICTION

1. The Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq*. ("FLSA"), applies to this matter through the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Article V, §502(a)(2).

2. This Court has jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1337(a) (proceedings arising under any Act of Congress regulating commerce).

3. This Court also has jurisdiction under the FLSA, 29 U.S.C. § 216(b), to adjudicate Plaintiff's claims.

4. This Court has jurisdiction over Plaintiff's non-FLSA claims pursuant to 28 U.S.C. § 1367(a) (supplemental jurisdiction).

5. Venue is properly placed in this Court as at all relevant time Plaintiff was an employee of Defendants doing business in Saipan, Commonwealth of the Northern Mariana Islands.

PARTIES

6. Plaintiff Yu Xuan ("Ms. XUAN" or "Plaintiff") is a citizen of the Peoples Republic of China currently residing in Saipan, Commonwealth of the Northern Mariana Islands.

7. Defendant JOO YEON CORPORATION ("JYC") is a corporation formed under the laws of the Commonwealth of the Northern Mariana Islands ("CNMI") with its principal place of business in Saipan, CNMI. JYC's alleged sole shareholder resides off-island and is the brother of Defendant YOUNG-SIN PARK. JYC's board of directors and officers are the brothers and a friend of Defendant YOUNG-SIN PARK.

8. Defendant SE YOUNG CORPORATION ("SYC") is a corporation formed under the laws of the Commonwealth of the Northern Mariana Islands ("CNMI") with its principal place of business in Saipan, CNMI. SYC's alleged sole shareholder resides off-island and is the same brother of Defendant YOUNG-SIN PARK that is the alleged sole shareholder of JYC. SYC's board of directors

and officers are also the brothers and a friend of Defendant YOUNG-SIN PARK.

9. Defendant YANG-TACK HWANG ("HWANG") is an individual, a citizen of the Republic of Korea and a resident of Saipan, CNMI.

10. Defendant YOUNG-SIN PARK is an individual, a citizen of the Republic of Korea and a resident of Saipan, CNMI.

11. Upon information and belief, Defendants HWANG and PARK are husband and wife and/or are living together in Saipan as husband and wife.

12. Upon information and belief, at all times relevant to Plaintiff's claims herein, HWANG and PARK were and are the *de facto* owners and controlled and operated JYC and SYC and continue to control and operate JYC and SYC as their own companies, not as corporate entities.

13. JYC and SYC are sham corporations and the alter egos of HWANG and PARK. The sole shareholder, directors and officers of JYC and SYC hold their "ownership" and titles in name only. None of the so-called owners, directors or officers contributed any capital to the corporations nor does any said individual participate in any material way in the ownership, control and/or operation of either JYC or SYC.

14. At all times relevant to Plaintiff's claims herein, the above-named DEFENDANTS, and all of them, were joint employers of Ms. XUAN as that term is used in and has been interpreted under the FLSA and the Commonwealth Minimum Wage and Hour Act, 4 C.M.C. §§ 9211 *et seq*. (2000) ("MWHA").

15. At all times relevant to Plaintiff's claims herein, each of the above-named DEFENDANTS, through the joint ownership, control and/or operation by HWANG and PARK, constituted one joint unified business enterprise.

16. At all times relevant to Plaintiff's claims herein, HWANG and PARK were acting directly and indirectly in the interest of JYC and SYC in relation to Ms. XUAN.

17. At all times relevant to Plaintiff's claims herein, the DEFENDANTS and, each of them, were joint employers of Ms. XUAN as that term is used in and has been interpreted under the FLSA.

18. At all times relevant to Plaintiff's claims herein, DEFENDANTS, through joint ownership, control and operation, constituted one joint unified business enterprise.

19. Unless otherwise noted, all references to DEFENDANTS herein are references to all above-named defendants, jointly and severally, regardless of their trade names ("DEFENDANTS").

20. It is expressly alleged herein that DEFENDANTS are all jointly and severally liable for Plaintiff's claims, and all of them, herein.

FACTS

21. Ms. XUAN began her employment with DEFENDANTS in or about June 2008.

22. In November 2008, Ms. XUAN entered into an employment contract with DEFENDANTS which was approved by the Director of Labor, Department of Labor, Commonwealth of the Northern Mariana Islands on November 20, 2008 with an expiration date of November 20, 2009 (the "Contract").

23. The Contract provided that, among other things, Ms. XUAN would be employed as a "tour counselor," that she would work a flexible schedule, and that should would be paid wages of $4.05 per hour plus an overtime premium of 1.5 times that hourly rate.

24. The Contract wage rate and overtime premium based thereon were subject to an increase based on any increase of the minimum wage rate provided by applicable law during the term of the Contract.

25. On May 26, 2009, the applicable legal minimum wage to which the Contract was subject increased to $4.55 per hour plus an overtime premium of 1.5 times that hourly rate.

26. The Contract was executed by HWANG as "Manager" for JYC.

27. On November 5, 2009, Ms. XUAN's Contract with DEFENDANTS was renewed by DEFENDANTS for a term to end on December 20, 2012. The Contract was renewed on the same

terms and conditions as the original Contract except that the renewal reflected the May 26, 2009 increase in the minimum wage.

28. Again, the renewed Contract was executed by HWANG on behalf of JYC.

29. On September 30, 2010, the applicable legal minimum wage to which the renewed Contract was subject increased to $5.05 per hour plus an overtime premium of 1.5 times that hourly rate.

30. The Contract, as renewed, by and between Ms. XUAN and DEFENDANTS collectively comprise the "Employment Contract" as the term relates to Plaintiff's Complaint and as the term is used herein.

31. In 2011, JYC filed an I-129CW Petition for a Nonimmigrant Worker on behalf of Ms. XUAN during the initial phase of the "transition period" under Title VII of the Consolidated Natural Resources Act of 2009, Public Law 110-229, codified at 48 U.S.C. § 1806.

32. Pursuant to applicable law, Ms. XUAN was allowed to continue working for DEFENDANTS pending the approval of the I-129CW Petition and for a period of one year thereafter.

33. JYC's Petition for Ms. XUAN was approved on June 23, 2012 for a term of employment with JYC to expire on June 22, 2013.

34. On October 15, 2012, without explanation, HWANG terminated Ms. XUAN's employment with DEFENDANTS.

35. From June 2008 through her termination of employment on October 15, 2012, Ms. XUAN was employed by DEFENDANTS as a tour coordinator and van driver in DEFENDANTS' tour business in Saipan. Ms. XUAN's duties included, among other duties, picking up and dropping off tour groups from South Korea at the airport when they arrived and departed Saipan, escorting multiple groups of foreign tourists on multi-day, coordinated tours of Saipan, and driving tourists to and from various activities including recreational water sports, meals and entertainment, shopping

and other tourist related activities in Saipan.

36. At all times relevant to this action, Ms. XUAN was an employee of DEFENDANTS within the meaning of § 203(e)(1) of the FLSA and § 9212(e) the MWHA.

37. At all times relevant to this action, Ms. XUAN was employed by DEFENDANTS within the meaning of § 203(g) of the FLSA and § 9212(d) of the MWHA.

38. At all times relevant to this action, Ms. XUAN was, in each work week for DEFENDANTS, engaged in commerce within the meaning of § 203(b) of the FLSA.

39. At all times relevant to this action, DEFENDANTS were employers of Ms. XUAN within the meaning of § 203(d) of the FLSA and § 9212(f) of the MWHA.

40. At all times while employed by DEFENDANTS, Ms. XUAN was employed, and actually performing work, in job category that is not exempt from the provisions of the FLSA and/or the MWHA.

41. At all times relevant to this action, Ms. XUAN was employed by DEFENDANTS in Saipan, Commonwealth of the Northern Mariana Islands.

42. At all times relevant to this action, DEFENDANTS as a single business enterprise had gross revenues in each year of operation in excess of $500,000.

43. Through the operations of their tour business and water sports business in the CNMI for tourists solicited by DEFENDANTS from South Korea, DEFENDANTS were an enterprise engaged in commerce or in the production of goods for commerce within the meaning of §§ 203 (r)(1) & (s)(1) of the FLSA.

44. From June 2008 through October 2012, Plaintiff worked for DEFENDANTS in excess of 18 hours per day, seven days per week with the exception of one period from June 10, 2011 to July 11, 2011 when she had her only vacation.

45. From June 2009 through July 2012, DEFENDANTS paid Plaintiff $800 per month for her services, with the exception of a one month period from June 10, 2012 through July 11, 2012

during which time Ms. XUAN was on unpaid vacation.

46. From about August 2012 through her termination in October 2012, DEFENDANTS paid Plaintiff $1,000 per month for her services.

47. DEFENDANTS failed to pay Ms. XUAN all minimum wages required by § 206(a) of the FLSA, by § 9221(a)(2) of the MWHA, and by Ms. XUAN's Employment Contract.

48. DEFENDANTS failed to pay Ms. XUAN overtime wages required by § 207(a) of the FLSA, by § 9222 of the MWHA, and by Ms. XUAN's Employment Contract.

49. DEFENDANTS failed to maintain full and accurate records of the hours actually worked by Ms. XUAN as required by § 215(a)(5) of the FLSA and § 9232(a) of the MWHA.

50. All of the actions and omissions alleged above were undertaken by DEFENDANTS, as a single business enterprise, either directly or through their owners, co-owners, officers, directors, managers, or agents.

51. All of the actions and omissions alleged above were willful within the meaning of § 9243 of the MWHA, and with regard to the applicability of the statute of limitations on FLSA claims.

FIRST CAUSE OF ACTION
(FLSA Violation - Unpaid Minimum Wage)

52. Plaintiff incorporates paragraphs 1 through 51 above as if fully set forth herein.

53. DEFENDANTS have violated the provisions of § 206(a) of the FLSA by failing to pay Ms. XUAN the applicable minimum wage per hour for all of the hours worked by Ms. XUAN in each work week for which she performed services for DEFENDANTS.

54. Ms. XUAN is entitled to payment of unpaid minimum wages from DEFENDANTS, jointly and severally, plus an additional equal amount as liquidated damages.

55. Ms. XUAN is also entitled to costs of the action and reasonable attorneys' fees pursuant to § 216(b) of the FLSA.

SECOND CAUSE OF ACTION
(MWHA Violation - Unpaid Minimum Wage)

56. Plaintiff incorporates paragraphs 1 through 55 above as if fully set forth herein.

57. DEFENDANTS have violated the provisions of § 9221(a)(2) of the MWHA by failing to pay Ms. XUAN the applicable minimum wage per hour for all of the hours worked by Ms. XUAN in each work week for which she performed services for DEFENDANTS.

58. Ms. XUAN is entitled to payment of unpaid minimum wages from DEFENDANTS, jointly and severally, and an additional equal amount as liquidated damages for DEFENDANTS' willful violation.

59. Ms. XUAN is also entitled to costs of the action and reasonable attorneys' fees pursuant to § 9244(b) of the MWHA.

THIRD CAUSE OF ACTION
(FLSA Violation - Unpaid Overtime Compensation)

60. Plaintiff incorporates paragraphs 1 through 59 above as if fully set forth herein.

61. DEFENDANTS have violated the provisions of § 207(a) of the FLSA by failing to pay Ms. XUAN overtime compensation in the amount of one and one-half times her regular pay rate for all of the hours worked by Ms. XUAN in excess of forty (40) hours in each work week.

62. Ms. XUAN is entitled to payment of unpaid overtime compensation from DEFENDANTS, jointly and severally, and an additional equal amount as liquidated damages.

63. Ms. XUAN is also entitled to costs of the action and reasonable attorneys' fees pursuant to § 216(b) of the FLSA.

FOURTH CAUSE OF ACTION
(MWHA Violation - Unpaid Overtime Compensation)

64. Plaintiff incorporates paragraphs 1 through 55 above as if fully set forth herein.

65. DEFENDANTS have violated the provisions of § 9222 of the MWHA by failing to pay Ms. XUAN overtime compensation in the amount of one and one-half times her regular pay rate for all of the hours worked by Ms. XUAN in excess of forty (40) hours in each work week.

66. Ms. XUAN is entitled to payment of unpaid overtime compensation from DEFENDANTS, jointly and severally, and an additional equal amount as liquidated damages for DEFENDANTS' willful violation.

67. Ms. XUAN is also entitled to costs of the action and reasonable attorneys' fees pursuant to § 9244(b) of the MWHA.

FIFTH CAUSE OF ACTION
(Breach of Contract)

68. Plaintiff incorporates paragraphs 1 through 67 above as if fully set forth herein.

69. From the commencement of her employment with DEFENDANTS in June 2009 through December 20, 2010, Ms. XUAN had a valid and binding Employment Contract with DEFENDANTS.

70. One of the terms of Plaintiff's Employment Contract with DEFENDANTS is that DEFENDANTS pay Plaintiff the applicable minimum wage per hour for all of the hours Plaintiff worked for DEFENDANTS each week of her employment with DEFENDANTS.

71. Another of the terms of Plaintiff's Employment Contract with DEFENDANTS is that DEFENDANTS pay Plaintiff overtime compensation for hours worked in excess of forty (40) hours each week of her employment.

72. Pursuant to the Employment Contract, said overtime compensation was to be paid at 1.5 times her regular rate by check in bi-weekly intervals.

73. By failing and refusing to pay Ms. XUAN her minimum wage, and overtime compensation for all of the hours Plaintiff worked in excess of forty (40) hours in each week of her employment, and by failing to pay such amounts by check in bi-weekly intervals, DEFENDANTS materially breached the Employment Contract.

74. Because of DEFENDANTS's material breach of the Employment Contract, Ms. XUAN is entitled to expectation damages, incidental and consequential damages, costs and reasonable attorneys' fees.

PRAYER FOR RELIEF:

Accordingly, Ms. XUAN prays for the following relief:

1. That DEFENDANTS, jointly and severally, pay Plaintiff the applicable minimum wage for all hours worked by Plaintiff for DEFENDANTS during the first forty (40) hours in each work week;

2. That DEFENDANTS, jointly and severally, pay Plaintiff her overtime compensation for all hours worked by Plaintiff for DEFENDANTS in excess of forty (40) hours in each work week;

3. That DEFENDANTS, jointly and severally, pay Plaintiff expectation, incidental and consequential damages for Defendant's material breach of the Employment Contract;

4. That DEFENDANTS, jointly and severally, pay Plaintiff an equal amount as liquidated damages;

5. That DEFENDANTS, jointly and severally, pay Plaintiff reasonable attorneys' fees and costs of this action.

DATED this 20th day of December, 2012.

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VERIFICATION OF COMPLAINT

I, YU XUAN, hereby certify that the forgoing Verified Complaint has been translated to me from English into my native language, Mandarin Chinese, and that I have read and understood the allegations and claims made herein and that I consent to be a party plaintiff herein. I further certify that the factual statements made herein are true and correct to the best of my knowledge and belief and that I verified the accuracy of the above Verified Complaint this 20th day of December, 2012.

Xuan Yu

YU XUAN
Plaintiff

I, Minbo Cho, hereby certify that I speak and read Mandarin Chinese fluently and that I have translated the foregoing Verified Complaint to Plaintiff YU XUAN clearly and accurately to the best of my abilities on this 20th day of December, 2012.

MINBO CHO
Translator